

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES  
Health Care Department Operations Manual

**2.3.4 Release of Information**

**(a) Policy**

California Correctional Health Care Services (CCHCS) and Health Information Management (HIM) shall:

- (1) Ensure established statutes which provide confidentiality protections for patients are followed.
- (2) Ensure all authorizations and releases are compliant with federal, state, and CCHCS statutes and regulations prior to processing the requests.
- (3) Ensure applicable regulations are followed governing the release of alcohol and/or drug treatment, human immunodeficiency virus test results, and mental health information.
- (4) Accept and process qualifying federal, state, civil, criminal, deposition, and arbitration subpoenas while ensuring the required timeframes are met throughout the process, and provide only the health records specifically requested in the subpoena and only those that are authorized to be released.
- (5) Establish a dedicated telephone Release of Information Access (ROI) Line or extension at each institution for the use of an authorized family member, friend, or legal representative of the patient to request health care information relating to a significant change in the patient's health care condition or status.

**(b) Purpose**

To ensure patient health information is protected and released according to federal and state rules, laws and regulations.

**(c) Applicability**

This policy applies to all health care staff who respond to requests for patient information.

**(d) Policy Responsibility**

- (1) Under the direction of the Deputy Director, Medical Services, HIM Headquarters, Institution Health Records (for currently incarcerated inmates), and HRC staff (for paroled or discharged inmates) are responsible for the oversight, implementation, monitoring, and evaluation of this policy.
- (2) The Chief Executive Officer, or designee, Health Record Technician III, and Health Record Technician II of each institution are responsible for the implementation, monitoring, and evaluation of this policy.

**(e) Procedure Overview**

CCHCS HIM and Health Records shall ensure all legal requirements providing privacy protections to patients are followed.

**(f) Procedure Responsibility**

- (1) The Chief Executive Officer (CEO), Chief Medical Executive (CME) and Warden are responsible for establishing and maintaining a dedicated telephone ROI Access Line or extension at each institution.
- (2) Institution Health Records and HRC staff shall collaborate with the Litigation Coordinators at each institution to ensure proper delivery and handling of all legal requests for PHI.
- (3) Health Records staff at institutions (for currently incarcerated inmates), and HRC staff (for paroled and discharged inmates) are responsible for processing all other requests for health information.

**(g) Procedure**

**(1) General Requirements: Authorization for Release of Information**

- (A) A patient's (or his/her personal representative's) authorization is considered valid if it contains at least the following elements:
1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
  2. The name or other specific identification of the persons(s) authorized to make the requested use or disclosure.
  3. The name or other specific identification of the person(s) to whom CCHCS may make the requested use or disclosure.
  4. A description of each purpose of the requested use or disclosure and the specific uses and limitations on the use of the health information by the persons or entities authorized to receive it. The statement "at the request of the individual" is a sufficient description of the purpose when a patient initiates the authorization and does not, or elects not to, provide a statement of the purpose.
  5. An expiration date or an expiration event (e.g., conclusion of litigation, completion of surgery) that relates to the individual or the purpose of the use or disclosure after which disclosure is no longer authorized.

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6. A signature which serves no other purpose than to execute the document and date. If the authorization is signed by a personal representative of the patient, a description of such representative's authority to act for the individual must also be provided.
7. A statement that the patient has the right to revoke the authorization in writing and a description of how the individual may revoke the authorization.
8. A statement that CCHCS may not condition treatment on whether the patient signs the authorization.
9. A statement concerning the potential for the information disclosed to be subject to redisclosure by the recipient and no longer protected by federal and/or state law.
10. A statement advising the patient of his/her right to receive a copy of the authorization.
11. The authorization must be in writing in at least 14 point type and must be clearly separate from any other language present in the same document.

(B) The CDCR 7385, Authorization for Release of Protected Health Information, satisfies the above requirements and should be used for disclosures pursuant to patient authorization. Other ROI Authorization forms may be accepted if they conform to all of the requirements as specified in Section (g)(1)(A) above.

(C) An authorization is considered defective and invalid if any material information in the authorization is known to be false by CCHCS, California Department of Corrections (CDCR), or its employees or if any of the following defects exist:

1. The expiration date or expiration event has passed.
2. The authorization has not been filled out completely or lacks a required element as specified in Section (g)(1)(A) above.
3. The authorization is known to have been revoked.

**(2) Written Requests for Release of Information**

When staff receive a completed CDCR 7385 or any type of authorization for release of information (does not have to be on a CDCR 7385), they shall review it for validity and follow the steps below:

- (A) Log the ROI request into the ROI tracking mechanism.
- (B) Retrieve the requested documents from the health record.
- (C) If records are in paper format, scan them into the health record.
- (D) Print the requested documents from the health record.
- (E) Provide the requestor with copies of the following documents:
  1. A completed Declaration of Custodian of Records.
  2. Copies of requested documents.
  3. A CDC 193, Trust Account Withdrawal Order, if appropriate (\$.10 per copy shall be charged from his/her Trust Account). Copies shall be made available to an indigent patient at no charge.
- (F) For all outside requests, package the requested documents for certified mail service and forward to the Centralized Mail area.
- (G) Update the ROI tracking mechanism.
- (H) Scan the signed CDCR 7385 into the health record.

**(3) Subpoenas**

State Civil or Criminal, Federal, Investigative, Deposition for Production of Business Documents or Personal Appearance, Worker's Compensation, Immigration and Customs Enforcement (ICE), Social Security, and out-of-state subpoenas:

- (A) All requests shall be submitted to the local Litigation Coordinator for processing.
- (B) Process according to state and regulatory statutes.
- (C) Follow instructions contained in the CDCR Office of Legal Affairs Subpoena Manual.

**(4) Family and/or Friend Access Line**

- (A) The CEO, or designee, shall work with the Warden to establish a dedicated telephone ROI Access Line or extension at each institution. The line is for the use of an authorized family member, friend, or legal representative of the patient to request health care information relating to a significant change in the patient's health care condition or status.
- (B) All verbal requests for health care information shall be referred to the ROI Access Line at headquarters or the local institution.

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**(5) Confidential Information**

The following extra confidential information requires special handling. A CDCR 7385 from the patient, a court order, or a search warrant specifically requesting the information is required for disclosure of:

- (A) Mental health records.
- (B) Psychotherapy notes.
- (C) Substance abuse/alcohol treatment records.
- (D) Substance abuse treatment program records are provided by a contracted service. The Litigation Coordinator is responsible for obtaining these records.
- (E) Genetic testing.
- (F) Communicable diseases.

**(6) Patient Access to Personal Health Information**

- (A) The patient shall complete a CDCR 7385.
- (B) Staff shall review the CDCR 7385 and correspond with the patient to identify the specific documents needed.
- (C) The ROI request is entered into the ROI tracking mechanism.
- (D) The patient must be notified of the acceptance of the request and provided the health records within 15 calendar days.
- (E) The requested documents are printed/copied from the health record.
- (F) The patient is notified of delivery of health records for review.
  - 1. If the patient is requesting any and all documents, documents shall be printed from the health record for review at no charge.
  - 2. If the patient is requesting specific document(s):
    - a. Documents shall be printed from the health record.
    - b. If the patient is provided selected documents, \$.10 per copy shall be charged from his/her Trust Account. Copies shall be made available to an indigent patient at no charge.

**(7) Patient Access to Mental Health Information**

- (A) The patient shall complete a CDCR 7385.
- (B) Staff shall review the CDCR 7385 and correspond with the patient to identify the specific documents needed.
- (C) The ROI request is entered into the ROI tracking mechanism.
- (D) If the patient's written request is to review his/her mental health records, authorization of the Chief of Mental Health or attending mental health provider shall be obtained.
- (E) The Chief of Mental Health or attending mental health provider may deny a request to review mental health records if there is a substantial risk of significant adverse or detrimental consequences to the patient in seeing or receiving a copy of the mental health records requested by the patient.
  - 1. Where a patient requests information be sent to his/her legal representative for term fixing or parole granting purposes, access to records may only be denied if disclosure would create an undue risk of harm to the security of the institution or others.
- (F) If the provider grants access to the mental health records in whole or in part the patient must be notified of the acceptance of the request and provided the records within 15 calendar days.
- (G) If the provider denies access to the mental health records:
  - 1. The patient must be informed of the denial within 30 calendar days, and will only be denied access to the information for which the provider has a basis to deny access. The denial must contain:
    - a. The basis of the denial.
    - b. A description of how the patient may complain to CCHCS or to the Secretary of Health and Human Services. Complaints to CCHCS shall be to the local institutional Appeals Office through the regular appeals process, and the denial shall include the contact information for the institutional Appeals Office, including the office title and address for receipt of appeals.
  - 2. Health Records staff shall proceed immediately to obtain a written statement from the attending clinician to be added to the patient's health record explaining the reason for denial. The statement shall:
    - a. Explain why access to this information is harmful to the patient or to the patient-therapist relationship.
    - b. State how access is to be granted, e.g., to a licensed mental health provider or to a social worker selected by the patient.

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3. Notify the patient that access will be granted to a licensed mental health provider or to a social worker of his/her choice.
  4. Request the patient to notify Health Records staff of the appropriate person to access his/her information.
- (H) If the request is for health records that are needed to support an appeal regarding eligibility for a public benefit program (e.g., Medi-Cal program, Social Security Disability Insurance benefits, or Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits), the following applies:
1. The patient or his/her representative shall be entitled to one copy, at no charge, of the relevant portion of the health records upon presenting to the provider a written request and proof that the health records are needed to support an appeal. These copies shall be transmitted within 30 days after receiving the written request.
  2. "Relevant portion of the patient's records" means those health records regarding services rendered to the patient during the time period beginning with the date of the patient's initial application for public benefits up to and including the date that a final determination is made by the public benefits program with which the patient's application is pending.
  3. Although a patient shall not be limited to a single request, the patient or patient's representative shall be entitled to no more than one copy of any relevant portion of his/her health record free of charge.
  4. This process shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's appeal, pending the outcome of that appeal. "Private attorney" means any attorney not employed by a nonprofit legal services entity.

#### References

- Code of Federal Regulations, Title 42, Part 2, Confidentiality of Substance Use Disorder, Subparts A-E, Sections 2.1-2.67
- Code of Federal Regulations, Title 45, Subtitle A, Chapter A, Subchapter C, Part 164, Subpart E, Section 164.501, Definitions
- Code of Federal Regulations, Title 45, Subtitle A, Chapter A, Subchapter C, Part 164, Subpart E, Section 164.520, Notice of Privacy Practices for Protected Health Information
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- California Code of Regulations, Title 22, Division 5, Chapter 12, Section 79803 Health Record Service, and Section 79807, Patient Health Record Availability
- California Civil Code, Division 1, Part 2.6, Confidentiality of Medical Information Act
- California Civil Code, Division 1, Part 2.6, Chapter 2, Section 56.1007
- California Civil Code, Division 3, Part 4, Title 6, Chapter 2, Article 3, Section 2029
- California Health and Safety Code, Division 106, Part 1, Chapter 1, Section 123115(b), and 123115(b)(3)
- California Welfare and Institutions Code, Division 5, Part 1, Lanterman-Petris-Short Act
- California Hospital Association Consent Manual, 2010, Chapter 15-17, *A Reference for Consent and Related Health Care Law* (37th ed., 2010)
- California Department of Corrections and Rehabilitation, Office of Legal Affairs Subpoena Manual
- Health Care Department Operations Manual, Chapter 2, Article 2, Confidentiality and Privacy

#### Revision History

Effective: 01/2002

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